

NEW



U.S. Department of
Transportation
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

May 8, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of Delta Air Lines, Inc. filed 4/14/98 in Docket OST-98-3740 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between any point or points in the United States, and any point or points in France, directly and via intermediate points, and beyond France to any point or points in third countries, and to integrate this authority with Delta's existing certificate and exemption authority. Delta intends to operate this service pursuant to a code-share arrangement with Air France. Delta has requested the authority for an indefinite duration.

United filed an answer stating it did not object to Delta's application as long as the Department simultaneously approved United's U.S.-France application in Docket OST-98-3732 for combination services, including allocation of additional U.S.-France combination service frequencies. United also stated that the public interest would be best served if the broad U.S.-France exemption requests of all carriers were conditioned to make clear that intermediate and beyond services could be operated on a blind-sector basis only as set forth in the new Agreement. Delta filed a reply arguing that there was no basis to withhold authorization of Delta's unopposed application, while the Department completes carrier selection procedures involving some of United's combination service applications.

Applicant rep: Robert E. Cohn (202) 663-8060 DOT Analyst: Sylvia Moore (202) 366-6519

DISPOSITION

XX Granted in part (see below)

XX Balance dismissed (*i.e.*, request for longer-term authority)

The above action was effective when taken: May 8, 1998, through May 8, 2000

Action taken by: **Paul L. Gretch, Director**
Office of International Aviation

XX The authority granted is consistent with the April 8, 1998 Memorandum of Consultations between the United States and France.¹

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Special Conditions: The authority granted was made subject to the following conditions:

(a) The authority to operate via intermediate points and beyond France to third countries will be on a blind-sector basis and is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.

(See Reverse Side)

¹ On April 8, 1998, the United States and France signed a Memorandum of Consultations (MOC) and initialed the text of a framework for a new Air Transport Agreement (Agreement). The MOC also provided that each Party would permit operations consistent with the new Agreement on the basis of comity and reciprocity, pending finalization of the Agreement.

(b) Any service provided under the route integration authority granted shall be consistent with all applicable agreements between the United States and the foreign countries involved, and further (a) nothing in the award of the route integration authority granted should be construed as conferring upon Delta rights (including fifth-freedom, intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights, and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Delta's authority by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing Delta a preference in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(c) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(d) The U.S.-France combination services operated by Delta must be operated within the level of services authorized Delta for U.S.-France combination services.

Remarks: Consistent with our standard practice for this type of application, we granted Delta's exemption authority for a period of two years, and dismissed its request for longer-term authority.

With respect to the issue raised by United, we contemporaneously granted United's application to operate scheduled combination services in the U.S.-France market.

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>.*